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**UNITED STATES BANKRUPTCY APPELLATE PANEL
 OF THE NINTH JUDICIAL CIRCUIT COURT OF APPEALS**

In Re:)	BK-S-06-11566-BAM
)	Chapter 13
JASON RANSOM,)	Appeal Ref.#
)	
Debtor,)	
)	
<hr/>)	
JASON RANSOM,)	
)	
Appellant,)	
)	
Vs.)	APPELLANTS' MOTION FOR LEAVE
)	TO APPEAL INTERLOCUTORY ORDER
)	
MBNA, AMERICA BANK, N.A.,)	
)	
Appellee.)	
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Comes Now, JASON M. RANSOM, Debtor/Appellant (hereinafter "Debtor") and moves the Bankruptcy Appellate Panel for Leave to Appeal the Bankruptcy Court's Interlocutory Order Denying Confirmation dated June 6, 2007, pursuant to 28 U.S.C. §158(a)(2) and F.R.B.P. 8003.

This is a paradigm case for interlocutory review. The issues are purely legal, squarely presented and if resolved in Appellants favor, dispositive ending the litigation. Although the Ninth Circuit itself has not ruled on this issue, across the country there are cases going both ways.

**I
FACTS**

Debtor filed a chapter 13 on July 5, 2006.

Debtors plan proposed \$500.00 per month for sixty (60) months.

Debtor owns one (1) vehicle, a 2004 Toyota Camry (hereinafter "Camry") that is paid off.

In filling out Debtors B22C, he deducted both an operating expense and an ownership expense, on lines 27 and 28 respectively. This resulted in a monthly disposable income under §1325(b)(2) on line 58 of \$210.00.

On September 5, 2006 Creditor, MBNA (hereinafter "MBNA" or "Creditor") objected to confirmation of Debtors plan. MBNA objected to Debtors deduction of the \$471.00 ownership expense on the paid off Camry. MBNA argues Debtors disposable income is actually \$681.00 per month.

Debtor voluntarily increased this payment to \$600.00 on or about October, 2006.

On June 6, 2007 the Bankruptcy Court denied confirmation holding Debtor could not deduct the ownership expense on a paid off vehicle. Thus, Debtor's plan payment was too low as it failed to comply with §1325(b)(1)(B).

**II
QUESTION PRESENTED**

1. Whether a debtor can deduct the ownership expenses under B.A.P.C.P.A. on a paid off vehicle?

2. Whether debtors other arguments lend a basis to ignore

1 §707(b)(2) expenses.

2
3 **III**
4 **ARGUMENT**

5 **REASONS WHY AN APPEAL SHOULD BE GRANTED**

6 Congress has granted "district courts. . . jurisdiction to
7 hear appeals. . .with leave of the court, from. . .interlocutory
8 orders and decrees. . .of bankruptcy judges." 28 U.S.C.
9 §158(a)(3); *see Allen v. Old Nat'l Bank of Washington (In re*
10 *Allen)*, 896 F.2d 416, 418-419 (9th Cir. 1990)(*per curiam*)
11 (bankruptcy judge's order denying a defendant's motion to dismiss
12 is an appealable "interlocutory order" within the meaning of
13 §158(a)(3)). In determining whether to accept interlocutory
14 appeals under §158(a)(3), district "courts generally borrow the
15 standards of 28 U.S.C. §1292(b), which provides for the
16 discretionary review by circuit courts of certain interlocutory
17 district court orders." *In re Pac. Gas & Elec.*, 280 B.R.
18 506,515(N.D. Cal. 2002); *see Kashani v. Fulton (In re Kashani)*,
19 190 B.R. 875, 882(9th Cir. BAP 1995)(same).

20 Section 1292(b) lays out three guideposts for determining
21 whether to certify an immediate appeal: first, whether the
22 proposed appeal involves "a controlling question of law" in the
23 sense of a purely legal question whose "resolution. . .could
24 materially affect the outcome of litigation in the [trial]
25 court," *In re Cement Antitrust Litig.*, 673 F.2d 1020, 1026 (9th
26 Cir. 1982); second, whether there are "substantial ground[s] for
27 difference[s] of opinion" regarding the questions presented by
28 the proposed appeal, 28 U.S.C. §1292(b); and third, whether "an

1 immediate appeal" is likely to "materially advance the ultimate
2 termination of the litigation." *Id.* Here, all three elements
3 for interlocutory review are present, and this Court thus should
4 grant Ocwen's motion and consider its appeal on the merits.

5 **THE PROPOSED APPEAL PRESENTS CONTROLLING QUESTIONS OF LAW**

6 The issues Appellant asks this Court to decide constitute
7 "controlling question[s] of law," because they are purely legal
8 in nature. A ruling in Appellant favor would require that the
9 plan be confirmed a material impact under any conceivable
10 standard. *Cf. Cement Antitrust Litig.*, 673 F.2d at 1026 (issue
11 can be "controlling" even if reversal of the trial court's order
12 would not "terminate the litigation"); *Klinghoffer v. S.N.C.*
13 *Achille Lauro Ed Altri-Gestione Motonave Achille Lauro in*
14 *Amministrazione Straordinaria*, 951 F.2d 21 (2d Cir. 1990)("[I]t
15 is clear that a question of law is 'controlling' if reversal of
16 the [trial] court's order would terminate the litigation."); 16
17 Charles Alan Wright et al., *Federal Practice and Procedure;*
18 *Jurisdiction* 2d §3930, pp. 423-424 (1996)(same). There is no
19 directly controlling Ninth Circuit authority, and the Bankruptcy
20 Court itself is encouraging this interlocutory order be heard.
21 In its opinion, the Bankruptcy Court stated "the Court would
22 favorably entertain a motion to certify the accompanying order
23 for appeal". (Mem. pg.8,ln.15-16) There are—at the very least—
24 "substantial ground[s] for difference[s] of opinion" nationwide
25 regarding the correctness of the Bankruptcy Court's denial of
26 confirmation based upon deducting the ownership expense. Compare
27 *In re Slusher*, 359 B.R.290 (Bkrptcy.D.Nev.2007), with *In re*

1 Fowler, 349 B.R. 414,418 (Bkrptcy. D.Del.2006), In re Grunert,
 2 353 B.R. 591,593 (Bkrptcy. E.D. Wis.2006), In re Farrar Johnson,
 3 353 B.R. 225,230(Bkrptcy. N.D. Ill.2006).

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 5 **AN IMMEDIATE APPEAL OF THE BANKRUPTCY COURT'S**
 6 **RULING WILL MATERIALLY ADVANCE THE ULTIMATE**
 7 **TERMINATION OF THE LITIGATION**

8 Immediate consideration of the questions presented by
 9 Appellants proposed appeal is likely to "materially advance the
 10 ultimate termination of the litigation." 28 U.S.C. §1292(b).
 11 Appellants contention that the ownership expense can be taken, if
 12 agreed by the appellate court, would allow the plan to be
 13 confirmed. *See, e.g., In re Pacific Gas and Electric Co*, 280
 14 B.R. 506, 514 (N.D. Cal. 2002)(Section 1292(b) requirements met
 15 where preemption theory, if correct, would end case as a matter
 16 of law). Given that many of the cases on which Appellant relies
 17 upon agree with Debtors position, confirmation is a likely
 18 outcome. In short, prompt review of the Bankruptcy Court's
 19 decision has the potential to save substantial time and effort
 20 for both the litigants and the Bankruptcy Judge.

21 Furthermore, bankruptcy orders are immediately appealable if
 22 they "determine and seriously affect substantive rights and cause
 23 irreparable harm to the losing party if he has to wait to appeal
 24 to the end of the bankruptcy case." Mason at 1316. Thus, if the
 25 order finally determines the discrete issue to which they are
 26 addressed, as in this case, it is immediately appealable. In re
 27 Technical Knockout Graphics 833 F.2d 797, 800 (9th Cir. 1987).

28 "Most adversary proceedings and contested matters in bankruptcy
 will satisfy the different test of being 'discrete disputes'

1 within the larger case." Sumy v. Schlossberg, 777 F.2d 921, 923,
2 (4th Cir. 1985). Plan confirmation is a contested matter and this
3 Order finally determined the discrete issue addressing whether a
4 debtor could deduct the ownership expense on a paid off vehicle.

5 As stated earlier, if the only possible hearing left for the
6 Bankruptcy Court is to confirm this case, the above decided issue
7 falls under the gray area known as "collateral" finality. See
8 Cohen v. Beneficial Indus. Loan Corp., 337 USC 541, 546, 69 S.Ct.
9 1221, 1225 93 L.Ed 1528(1949). In collateral finality, "the order
10 appealed from must conclusively determine the disputed question.
11 . ., resolve an important issue completely separate from the
12 merits of the action and be effectively unreviewable on appeal
13 from a final judgment." Coopers & Lybrand v. Livesay, 437 U.S.
14 463, 468, 98 S.Ct. 2454, 2457, 57 L.Ed 2d. 351 (1978).

15 Finally, the Court has "adopted a test that emphasizes the
16 need for immediate review, rather than whether the order is
17 technically interlocutory, in determining what is appealable as a
18 final judgment in bankruptcy proceedings." White v. White, 727
19 F.2d 884, 885, (9th Cir. 1984). Thus, this interlocutory appeal,
20 should be granted because the controlling question of law
21 involved has a substantial difference of opinion.

22 23 **III** 24 **CONCLUSION**

25 For the reasons stated above, Appellant respectfully requests
26 that this Court grant it leave to appeal the June 6, 2007 Order of
27 the Bankruptcy Court denying confirmation as there is a
28 controlling question of law to which there is a substantial

1 difference of opinion.

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3 DATED this 18th day of June, 2007.

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5 Respectfully submitted,

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